IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.13648-M of 2007
Date of Decision:- 13.12.2007

Davinder Kumar Bansal ....Petitioner(s)

through
Mr.Rakesh Gupta, Advocate

vs.

Pritam Singh ....Respondent(s)

through
None.

***

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

***

1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

***

SURYA KANT, J. (ORAL)

In this petition under Section 482 Cr.P.C., the petitioner is aggrieved at the order dated 27.1.2007 passed by the learned Judicial Magistrate, Ist Class, Chandigarh whereby cross-examination of the respondent-complainant has been ordered to be treated as nil.

The facts may be noticed briefly.

The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner. In the said complaint, the respondent-complainant appeared as a witness on 22.11.2006, however, his cross-examination was deferred to 11.12.2006. On 11.12.2006, the learned Presiding Officer remained busy in recording evidence in an old case, therefore, the cross-examination of the respondent-complainant was deferred and adjourned to 27.1.2007.

On January 27, 2007 when the case was called, counsel for the petitioner was not present being busy in some other case. It was accordingly

decided to be taken up at 11.00 a.m. The case was taken second time at 11.00 a.m. and at that time also the defence counsel was not present to cross-examine the complainant who is about 70 years of age. However, in order to give one more opportunity, the learned Presiding Officer passed over the case and decided to take it again on 12.30 p.m. Learned defence counsel, however, did not come present on 12.30 p.m. also. Consequently, the impugned order was passed thereby treating the cross-examination on behalf of the petitioner as nil.

Aggrieved, the petitioner has approached this Court.

It appears from the record that two dates were given to the petitioner for cross-examination of the respondent-complainant out of which on one date, the learned Presiding Officer was held up in other case while on the second date the case was called thrice to cross-examine the complainant, however, the defence counsel did not turn up.

In the normal circumstances and having regard to the nature of the case, no fault can be found with the impugned order passed by the learned Judicial Magistrate, however, in the interest of justice and to give one and the last opportunity to the petitioner, the impugned order is set aside and the learned Judicial Magistrate is directed to re-summon the respondent-complainant either on the date fixed or on any other date and to give one more opportunity to the petitioner to cross-examine the respondent-complainant subject to, however, payment of Rs.2000/- as costs to be paid by the petitioner to the respondent-complainant.

Disposed of.

December 13, 2007 **(SURYA KANT)**
poonam **JUDGE**